

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHISALA CHIBUYE,

Plaintiff,

v.

CELLCO PARTNERSHIP; Jocelyn Ross
in her individual and professional capacity;
John Doe(s),

Defendants.

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Civil Action File No.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendants Cellco Partnership and Jocyline Ross (“Defendants”), by and through counsel, hereby file this Notice of Removal (the “Notice”) of this action from the Superior Court of Fulton County, Georgia to the United States District Court for the Northern District of Georgia, Atlanta Division. Removal is based upon federal question jurisdiction because a federal question appears in the Complaint filed by Plaintiff Chisala Chibuye (“Plaintiff”). In support of this Notice, Defendants state as follows:

I. Background

1. This action was commenced on December 7, 2020 in the Superior Court of Fulton County, Georgia, as Civil Action File No. 2020CV343279.

2. On January 15, 2021, Plaintiff filed her First Amended Complaint (the “Amended Complaint” or “Am. Compl.”), substituting Cellco Partnership in place of Verizon.

3. That same day, January 15, 2021, Defendants waived service of process of the Amended Complaint in accordance with O.C.G.A. § 9-11-4(d). Plaintiff filed a notice of waiver with the Court on January 22, 2021.

4. In the Amended Complaint, Plaintiff alleges disability discrimination, hostile work environment and retaliation under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”) and her original Complaint includes as exhibits Plaintiff’s Charges of Discrimination filed with the Equal Employment Opportunity Commission alleging disability discrimination under the ADA and retaliation. (Am. Compl., ¶¶ 20-28; Compl. Exs. B and D).

II. This Notice of Removal is Timely Filed in the Proper Venue.

5. Removal of this action is timely because this Notice of Removal is filed within 30 days of Defendants’ waiver of process in connection with service of the Summons and First Amended Complaint, in accordance with the provisions of 28 U.S.C. § 1446(b).

6. The United States District Court for the Northern District of Georgia, is the proper place to file this Notice of Removal under 28 U.S.C. § 1441(a) because

it is the federal district court that embraces the place where the original action was filed and is pending. 28 U.S.C. § 90(b)(2).

III. This Court Has Federal Question Jurisdiction.

5. Pursuant to 28 U.S.C. § 1331, “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. This Court has original jurisdiction here pursuant to 28 U.S.C. § 1331 because Plaintiff’s Amended Complaint alleges violations of federal law, namely the ADA.

6. Therefore, removal to this Court is proper under 28 U.S.C. § 1441(a), which provides, in pertinent part, that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

7. The Supreme Court has held that federal courts have jurisdiction to hear, originally or by removal from state court, cases where federal law creates the cause of action being alleged or when a claimant’s right to relief depends on the resolution of a substantial question of federal law. *See Franchise Tax Board v. Constr. Laborers Vacation Trust*, 436 U.S. 1, 9 (1982) (explaining that “a case

‘[arises] under’ federal law where the vindication of a right under state law necessarily turns on some construction of federal law”).

8. Further, to the extent the Complaint alleges statutory, state common law, or other nonfederal claims, this Court has supplemental jurisdiction over any such claims under 28 U.S.C. § 1367 because those claims arise out of the same operative facts as Plaintiff’s claims under federal law and “form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a) (2010); *Milan Exp., Inc. v. Averitt Exp., Inc.*, 208 F.3d 975, 980 (11th Cir. 2000).

9. Thus, because some or all of Plaintiff’s claims arise under the laws of the United States, removal of this entire cause of action is appropriate under 28 U.S.C. § 1441. Accordingly, as the state court lawsuit is pending in the Superior Court of the Fulton County, Georgia, Defendants are entitled, pursuant to 28 U.S.C. § 1441(a), to remove this action to the United States District Court for the Northern District of Georgia.

IV. Notice of Removal Filed in the Superior Court of Fulton County, Georgia.

10. Promptly after the filing of this Notice of Removal, Defendants will give notice of the filing of this Notice of Removal to the Superior Court of Fulton County, Georgia, and to Plaintiff in compliance with 28 U.S.C. § 1446(d).

11. In accordance with 28 USC § 1446(a), attached are the following exhibits, including copies of the documents filed in the Superior Court of Fulton County, Georgia:

- (a) **Exhibit A** – Complaint;
- (b) **Exhibit B** – Summons issued as to Defendants Verizon and Jocyline Ross;
- (c) **Exhibit C** – First Amended Complaint;
- (d) **Exhibit D** – Notice of Waiver of Process; and
- (e) **Exhibit E** - The notice of removal filed by Defendants in the Superior Court of Fulton County, Georgia.

WHEREFORE, Defendants Cellco Partnership and Jocyline Ross notice the removal of this action from the Superior Court of Fulton County, Georgia to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 12th day of February, 2021.

/s/ M. Laughlin Allen
M. Laughlin Allen (Ga. Bar No. 901999)
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CERTIFICATE OF SERVICE AND TYPE SIZE COMPLIANCE

Pursuant to Local Rule 5.1C, N.D. Ga. and Standing Order No. 16-01, the foregoing pleading is prepared in Times New Roman, 14 point, was filed using the CM/ECF system, and was served on counsel for the opposing party in this matter by depositing a copy of this pleading in the United States Mail in a properly addressed envelope with adequate postage as follows:

Kamau K. Mason
The Law Offices of Kamau K. Mason & Assoc.
3036 Woodrow Drive
Lithonia, GA 30038

This 12th day of February, 2021.

/s/ M. Laughlin Allen
M. Laughlin Allen
Georgia Bar No. 901999